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EXHIBIT H

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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CONNECTU, INC. : DOCKET NUMBER CA0710593
PLAINTIFF :
versus : UNITED STATES COURTHOUSE
FACEBOOK, INC., ET AL :
DEFENDANTS : BOSTON, MASSACHUSETTS
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JUNE 2, 2008
2:30 p.m.

TRANSCRIPT OF MOTION HEARING

UNSEALED HEARING ONLY

BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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P R O C E E D I N G S

THE DEPUTY CLERK: All rise.

This Honorable Court is now in session.

You may be seated.

Calling the case, Civil Action 07-10593, ConnectU, Inc. versus Facebook, Inc., et al.

THE COURT: Well, at the outset, I do have a motion to move this case in camera.

My general view is, unless there is some showing of specific necessity beyond the generalized discussion, then, I won't do that.

of having an interview with Mr. Parmet, it may make it easier for the court to see what the relevance is.

THE COURT: Why would -- why would I do that?

Let me place it in a somewhat different context.

Let's assume that the parties entered into an agreement with the understanding that there were unresolved Discovery disputes, but they, nevertheless, entered into the agreement, and, then, there's an agonizing reappraisal of whether it was a good agreement to enter into, and, they're executing the various kinds of initiatives to try to undo it.

Isn't the first step to say: If, on the basis of this settlement; at least, as contended by Facebook, the parties entered into it with the knowledge of unresolved matters, then, the first thing for Judge Ware to do is to decide whether or not to permit some further more open Discovery?

I'm not -- I don't find compelling the kind of Whitman Sampler of three or four cases regarding settlement representations.

There were no settlement representations; at least, as I can see it, in the settlement sheet.

Parties chose to do what they did on the basis of imperfect knowledge about what the outcome of the case would be.

Uncertainty isn't one of the greatest drivers of settlement, of course, and, so, it seems to me the first thing to do is simply say Judge Ware can decide this case on the basis of what he has there.

Why should I look at these documents?

If he wants me to look at the documents, I'll look at them, or if he wants to look at the documents.

MR. UNDERHILL: Your Honor, I'm Mike Underhill, and I am lead counsel in the California case with ConnectU.

May I respond to that question?

THE COURT: Sure.

MR. UNDERHILL: I appreciate it.

First of all, Judge Ware doesn't have any of these issues in front of him. He's not really become aware of these issues.

THE COURT: And whose fault is that?

MR. UNDERHILL: Well, it's just happening now, Your Honor. It's not anybody's fault.

THE COURT: And, so, if you want to raise this with him --

MR. UNDERHILL: Right.

THE COURT: -- then, you can.

MR. UNDERHILL: Right; but here's the issue, Your Honor: Judge Ware, presumably, is not going to have any interest in diving into the protocol, which is a Massachusetts order, in trying to get to the bottom of whether --

THE COURT: Do you want me to rule on the protocol, whether or not Mr. Parmet was authorized to disclose anything other than the code?

MR. UNDERHILL: No, Your Honor.

THE COURT: I mean, I'll rule on that.

MR. UNDERHILL: I'm not looking at that issue, Your Honor.

What I am looking at, however, is, we believe, under the facts as we know them now, is very, very serious attorney misconduct in this case and a violation of This Court's orders by Facebook's attorneys, and that is an issue --

THE COURT: Let me see.

What does in a mean?

Does it mean that they willfully withheld documents that should have been disclosed; that is, they had an obligation to disclose the documents and they didn't disclose them?

MR. UNDERHILL: That is, in fact, the case, Your Honor.

THE COURT: Now, how do I deal with that when it is a moving target; that is to say, it was rolling Discovery, and they have not come to the concluding point at which they were obligated to make that disclosure?

MR. UNDERHILL: Well, we believe that they were, MR. HORNICK: May I ask The Court's permission to submit these documents to the California court?

They're under seal in This Court.

THE COURT: Only if Judge Ware asks me for them.

You can ask him to ask me, if you think that he'll find that compelling. I'm not sure I would in his position, but they're here, and the way I'm perceiving this now -- and I think the next stage is that I have to go into in camera proceedings with simply Facebook's attorneys and Mr. Parmet's attorneys, just to clarify matters a bit, but the way I see it is -- I will preserve the basis for this issue.

You can argue the issue to Judge Ware. I've made no ruling, with respect to whether or not they're relevant, or not, because I'm not even going to look at them, because I don't think, at this stage, it is necessary for me to look at them, particularly when there is outstanding the question of whether or not there is an enforcement agreement that would obviate that altogether.

MR. HORNICK: Well, Your Honor, these -- the subject of whether there is a settlement, it seems to me, is, obviously, before Judge Ware, but there is still the question of whether the two cases that are in This Court are alive, and there is nothing, at all, to indicate that they're not, and, in fact, all of the communications that have been given to This Court about whether those two cases are alive --

THE COURT: I'll tell you, my view is, if Judge Ware says that this is an enforceable agreement; that is, the term sheet and settlement agreement's enforceable, these cases were dead on the day that this agreement was entered into or the day after.

If it's not, then, you're right, they're over, and that's the whole gist of the question, but it seems to me an undue waste of judicial resources, and the parties have their own and have been making their own choices about the expenditure of theirs, to litigate this in a parallel fashion, particularly when nobody's asking me to enforce this agreement.

I will take my direction from Judge Ware and his resolution.

If this isn't an enforceable agreement, then, the case is still on -- cases are still on.

MR. HORNICK: Your Honor, the way that you've phrased that point several times today makes me wonder whether This Court would entertain a motion to open the settlement, based upon misconduct of the plaintiffs or their counsel in failing to produce documents that they should have produced before; in other words, you've asked me and I'm asking you --

THE COURT: Not, until after Judge Ware -- I'd ask -- not until Judge Ware rules on this.

I've asked you in a large fashion, whether you want me to rule on the question of the enforceability of the settlement agreement.

I'll tell you that I would do it more or less in the same fashion and proceed in more or less the same fashion Judge Ware is doing it, but I don't even think I have the authority to do that.

He has the authority -- first, he has the first cut at this. Parties wanted him to have jurisdiction to enforce the agreement.

It's kind of a fine nuance to say that that's not an exclusive choice of jurisdiction, although I frankly find that meretricious, but the way in which I think this has to be dealt with is to say: Judge Ware's going to decide it on the basis of the parties' submissions, and he'll decide whether or not it's necessary to -- in order to rule on it, to -- have further proceedings in This Court, and I stand ready to do whatever is necessary, or he can decide that it's not an enforceable agreement, and, then, we're off to the races again.

MR. HORNICK: Your Honor, the reason that we were asking you to review these documents is because, if Judge Ware does find that it's an enforceable agreement, then, the logical, one of the logical, places to file a new lawsuit and to reopen this matter, under Rule 60 or based upon fraud on the court or based upon fraud on the parties, would be right here, because this is the court that knows about these issues.

THE COURT: Well, you know, always be careful what you ask for.

(Laughter.)

THE COURT: So -- but we do that step by step.

We don't have a 60B motion, until we have a final judgment.

We don't have a final judgment yet, because it is tied up in this issue of the enforceability of this agreement, as to which a variety of issues have been raised here, but I will be bound by whatever Judge Ware decides, concerning enforceability of this agreement, and I'll deal with whatever follow-on that leads to, either that he finds it to be an enforceable agreement or he doesn't.

MR. HORNICK: Well, Your Honor, the risk is that we will ask Judge Ware to order the production of these documents, and he'll say: They're not relevant to the case that's before him.

THE COURT: Well, you know, you'll just have to --

MR. HORNICK: And that they belong here.

THE COURT: Right.

Okay; so, then, we'll go step by step.

I suspect he won't do that. That's my general view.

My general view is: He'll look at all the facts

C E R T I F I C A T I O N

I, DIANE M. MOLAS, a Registered Professional Reporter (RPR), a Certified Shorthand Reporter (CSR) in the State of Delaware, a Certified Court Reporter (CCR) in the State of New Jersey, and a Notary Public in the Commonwealth of Pennsylvania, do hereby certify that the foregoing is a true and accurate transcript of the proceedings reported by me, on June 2, 2008, and that I am neither counsel, nor kin, to any party or participant in said action, nor am I interested in the outcome thereof.

WITNESS my hand, this
Sixth Day of June, 2008.

Diane M. Molas, RPR, DE CSR, and NJ CCR
DE Certification Number 208-RPR
NJ Certification Number 30XI00228400

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